

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel.	)	
JEREMIAH W. (JAY) NIXON,	)	
Attorney General	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
COLLEEN HUCKSHOLD, d/b/a	)	Division No. _____
CAJA ENTERPRISES and	)	
OMNI DATA SYSTEMS, INC.,	)	
Serve at: 322 Caroline	)	
Kirkwood, MO 63022	)	
	)	
or	)	
	)	
132 Crestmont Circle	)	
Wildwood, MO 63040	)	
	)	
CURT HUCKSHOLD, d/b/a	)	
OMNI DATA SYSTEMS, INC.,	)	
Serve at: 132 Crestmont Circle	)	
Wildwood, MO 63040	)	
	)	
and	)	
	)	
CURT HUCKSHOLD,	)	
DOB 12/02/1952	)	
SSN: 500-58-5351	)	
Serve at: 132 Crestmont Circle	)	
Wildwood, MO 63040	)	
	)	
Defendants.	)	

**PLAINTIFF’S PETITION FOR PRELIMINARY AND  
PERMANENT INJUNCTIONS, RESTITUTION,  
CIVIL PENALTIES, AND OTHER COURT ORDERS**

COMES NOW the State of Missouri as Plaintiff in this action, by and through its

Attorney General Jeremiah W. (Jay) Nixon and his assistant Peter Lyskowski, and states as follows:

**PARTIES**

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri. The Attorney General brings this action in his official capacity pursuant to Chapter 407, RSMo 2000.<sup>1</sup>
2. Defendant CAJA Enterprises operates as a fictitious registration filed with the Missouri Secretary of State. CAJA Enterprises' business address is 132 Crestmont Circle, Wildwood, MO 63040, according to that entity's May 30, 2002 registration with the Secretary of State, which form is attached hereto and incorporated by reference as Exhibit 1.
3. Defendant Colleen Huckshold is the 100% owner of CAJA Enterprises, as evidenced by Exhibit 1.
4. Defendant OMNI Data Systems (hereinafter "OMNI") operates as a Division of CAJA Enterprises. OMNI's postal address is 132 Crestmont Circle, Wildwood, MO 63040, according to its website, <http://www.omni1.com> (hereinafter "website").
5. Defendant Curt Huckshold is the President of OMNI, according to the website.
6. Defendant Curt Huckshold resides, or did reside at all times relevant to this action, at 132 Crestmont Circle, Wildwood, MO 63040.

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<sup>1</sup>All references unless otherwise noted are to Revised Missouri Statutes 2000.

## **JURISDICTION**

7. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 6 above as if fully set forth herein.
8. The Circuit Court has jurisdiction of this action pursuant to § 407.100, which provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitation, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds their funds or property may be hidden or removed from this state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including, but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to

insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty or not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance or procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.

8. The attorney general is authorized to enter into consent judgments or consent injunctions with or without admissions or violations of this chapter. Violation of any such consent judgment or consent injunction shall be treated as a violation under section 407.110.

### **VENUE**

9. Plaintiff hereby incorporates by this reference all of the allegations contained in paragraphs 1 through 8 as if fully set forth herein.
10. Venue lies in the Circuit Court of St. Louis County, Missouri, because Defendants' businesses and residences are located there, and some of the transactions alleged herein took place in St. Louis County.

### **STATEMENT OF FACTS**

11. Plaintiff hereby incorporates by this reference all of the allegations contained in paragraphs 1 through 10 as if fully set forth herein.
12. OMNI, a division of CAJA Enterprises, engages in the sale and service of hardware and software designed to assist in the operation of hair salons.

13. OMNI primarily uses the website to solicit individuals to purchase said hardware and software.
14. The hardware offered for sale by OMNI includes, but is not limited to, cash drawers, bar code scanners, and receipt printers, all of which may be integrated into existing computer systems for processing payment for services and goods provided by salons using the hardware.
15. The software offered for sale by OMNI, according to the website, includes, but is not limited to:
  - a. “OMNI First Step,” referenced as “Entry Level” on the website;
  - b. “OMNI LITE;”
  - c. “OMNI Salon Manager,” referenced as “Our Spa Package” on the website;
  - d. “OMNI Visual Book,” referenced as an “Appointment Book” on the website;
  - e. Network or multiple-user versions of the above.
16. The software offered for sale by OMNI performs functions including, but not limited to: inventory control, client profile, stylist totals, stylist commissions, gift certificate tracking, time clock, chemical/service note storage, forecasting, and appointment sheets.
17. According to the website “[w]e ship all orders within 24 hours of them being taken.”

18. Consumers who purchase software receive at no cost a 90-day membership in OMNI's "Extended Support Program," which, according to the website, gives consumers telephone assistance with software operation 24 hours per day, 7 days per week, as well as free software updates/upgrades.
19. Membership in the Extended Support Program after the 90-day period, the price of which is not specified on the website, is "optional but highly recommended," according to the website.
20. OMNI issues frequent updates/upgrades, also referenced as "releases" on the website, of its software programs.
21. The website states "it's extremely important that you are on the most current version. It is difficult to support a client that is even 1 software release behind."
22. The website further states "[i]f your [sic] not interested in the Extended Support Program, simply write a brief note on the Statement and return it to our office. We won't bother you about this in the future. Please note that once your [sic] off the program, it will cost you more for past updates and to be reinstated."
23. In order to activate OMNI software once it has been installed in a consumer's computer, a code is required and is provided by OMNI.
24. On an approximately annual basis, a new code must be issued by OMNI so that users may continue usage of the software they purchased.
25. According to the website, "OMNI is please to announce our 26<sup>th</sup> Year in Business."

26. According to the website, “OMNI Data Systems is a proud Division of CAJA Enterprises.”
27. According to the website, “OMNI is the worlds [sic] largest supplier of computer software to the Beauty Industry with thousands of users Nationally and Internationally.”
28. According to the website, “[w]e [OMNI] are recommended by the IBM Corporation in their National Database.”
29. OMNI’s “return policy,” listed on the website, states:
- Please note that all software sales are final. We will take the software back for a full refund if the seal isn’t broken on the package. All contents including documentation must be in new condition. We will accept your Return under the following conditions: It must be within 7 days and requires a Return Authorization Number issued from our offices in St. Louis Missouri. Computer equipment purchased from OMNI can only be returned if unopened and in the original box. There is a 24 percent restocking fee. See our OMNI Standard License Agreement for further details.”
30. The website lists several e mail addresses, including, but not limited to:
- sales@omni1.com, salon@omni1.com, omni1@omni1.com, curthuckshold@omni1.com (listed as the contact for the “Presidents [sic] Office”), omni1@sltnet.com.
31. The website’s “technical support page” contains information about the support offered by Defendants.
32. The technical support page provides information about the Extended Support Program, including that the program entitles members to 24 hours per day, 7 days per week telephone support and all software updates/upgrades.

33. The technical support page also contains information about “E-mail Support,” and under that heading states: “These are best [sic] ways to have your questions answered concerning the OMNI Salon Management Software.”
34. After the above statement, the information provided includes hyperlinks to two technical support e mail addresses.
35. After the above statement, the information provided also includes two telephone numbers below the subheading “Technical Support.” Those numbers are listed as: “1.636.273-6720 Ext. 4 (Regular and International) 1.800.766-2449 Ext. 4 (Members of Our Extended Support Program Only).”

**VIOLATIONS OF THE MERCHANDISING PRACTICES ACT**

***I. Defendants wrongfully failed or refused to deliver goods as promised, and, despite proper notice, failed or refused to provide a refund when requested***

36. Plaintiff hereby incorporates by this reference all of the allegations contained in paragraphs 1 through 35 as if fully set forth herein.
37. On at least one occasion, Defendants received orders from a consumer, accepted payment for the goods ordered, and then failed or refused to deliver said goods or provide a refund, specifically including, but not limited to, the following consumers:

<b><u>Consumer</u></b>	<b><u>Address</u></b>	<b><u>Purchase Price</u></b>
Stephen Crispell	10538 Old Grove Circle Bradenton, FL 34212	\$522.50
Leatha Martin	16417 North 47 <sup>th</sup> Dr. Glendale, AZ 85306	\$350.00



Roxie Suchowski	3655 West Maple Road Bloomfield, MI 48301	\$875.00
Bobby Ritchie	95 White Bridge Rd. #102 Nashville, TN 37205	\$775.00
Gloria Tristany	8125 W. Sahara Las Vegas, NV 89117	\$340.00
Tranquil Nail Salon	2320 Hart Rd., Apt. 4 Highland, IN 46322	\$280.00
Lorraine Brown	P.O. Box 1006 Fowlerville, MI	\$915.00
Dianne McGrew	15 Whalen Rd. Hopkinton, MA 01748	\$400.00
Denise Kofeldt	3029 Old Forest Rd. Lynchburg, VA	\$360.00
Victoria Mitchell	1586 East 48 <sup>th</sup> Street Brooklyn, NY 11234	\$620.00
Leyanee Perez	7160 West 20 <sup>th</sup> Ave., Suite M-133 Hialeah, FL 33016	\$204.00

38. As a result of Defendants' failure or refusal to deliver goods as promised, consumers suffered financial harm in the form of lost or impaired business through inability to use the necessary hardware and/or software.
39. As a result of Defendants' failure or refusal to deliver goods as promised, consumers suffered inconvenience and hardship in that consumers had to repeatedly contact Defendants, often incurring long distance phone charges and taking time away from their business duties.

40. As a result of Defendants' failure or refusal to deliver goods as promised, consumers suffered direct financial loss in the amount of the goods purchased.
41. As a result of Defendants' failure or refusal to tender a refund when requested, consumers suffered direct financial loss in the amount of the goods purchased.
42. Defendants' failure or refusal to deliver goods when promised constitutes deception, false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.
43. Defendants' failure or refusal to tender a refund when requested constitutes false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***II. Defendants failed or refused to timely deliver goods as promised***

44. On at least one occasion, Defendants received orders from a consumer, accepted payment for the goods ordered, and then failed or refused to timely deliver said goods, often despite consumer's repeated requests or demands for same, and in spite of Defendants promise on the website that all orders are shipped within 24 hours of placement. Said occurrences include, but are not limited to, transactions with the following consumers:

<b><u>Consumer</u></b>	<b><u>Address</u></b>	<b><u>Purchase Price</u></b>
Cheryl Currao	7 Hawkins Pond Lane Salem, NH 03079	\$652.00
Bobby Ritchie <sup>2</sup>	95 White Bridge Rd. #102	\$775.00

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<sup>2</sup>Ritchie is also listed in paragraph 37 above. He was promised delivery within three days of his order. He received neither item in a timely fashion. More than a month after placing the

	Nashville, TN 37205	
John Lombardy	5595 East 5 <sup>th</sup> Street Tucson, AZ 85711	\$400.00
Jill McSheffrey	93 Main Street Andover, MA 01810	\$412.00
Regina Harmon	262 Weisner Street Winston-Salem, NC 27127	\$252.00
Judith Bice	5516 South Lindbergh Blvd. St. Louis, MO 63125	\$150.00
Alvin Quarles, Jr.	1060 Lakemont Trace Roswell, GA 30075	\$99.00

45. On at least one occasion, a consumer made Defendants aware of the necessity of receiving the goods in anticipation of the opening of a new salon, and an express term of the contract between Defendants and a consumer was the timely delivery of the goods. Defendants promised to deliver the goods in such time that they could be installed and functioning prior to the salon opening.
46. On at least one occasion, a consumer, having not received the goods in a timely manner as promised, requested a refund, but was refused.
47. As a result of Defendants' failure or refusal to deliver goods in a timely manner as promised, consumers suffered financial harm in the form of lost or impaired business through inability to use the necessary hardware and/or software.

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order, he communicated to Defendants that he wished to cancel. The next day, he received the software, which he returned unopened but has not received a refund. He has not received the hardware he ordered.

- 48. As a result of Defendants' failure or refusal to deliver goods in a timely manner as promised, consumers suffered inconvenience and hardship in that consumers had to repeatedly contact Defendants, often incurring long distance phone charges and taking time away from their business duties.
- 49. As a result of Defendants' failure or refusal to tender a refund when requested, consumers suffered direct financial loss in the amount of the goods purchased.
- 50. Defendants' failure or refusal to deliver goods in a timely manner as promised constitutes deception, false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.
- 51. Defendants' failure or refusal to tender a refund when requested constitutes false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***III. Defendants refused to provide technical support to consumers who had not joined the Extended Support Program***

- 52. On at least one occasion, Defendants have refused to provide technical support to consumers, citing their lack of membership in the Extended Support Program.
- 53. Defendants have told consumers that they had to join the Extended Support Program before any of their questions would be answered.
- 54. Defendants' web site's technical support page contains information that consumers could reasonably construe to indicate that they would get support without belonging to the Extended Support Program, to-wit:

- a. There are two e mail addresses listed for technical support, and nowhere in the description of the Extended Support Program is it stated that only members of the Program may get support through e mail communications;
  - b. There are two phone numbers for technical support, only one of which is exclusively designated for Extended Support Program members.
55. Defendants' failure or refusal to provide support to non-members of the Extended Support Program, when the content of the web site indicates that support may still be provided constitutes deception, fraud, false promise, misrepresentation and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***IV. Defendants failed to provide technical support to those who were members of the Extended Support Program***

56. Upon information and belief, Defendants charged consumers approximately \$175.00<sup>3</sup> to join the Extended Support Program.
57. Other consumers were members of the Extended Support Program on a 90-day trial basis, as promised by Defendants due to the purchase of software or hardware from Defendants.
58. As a benefit of the Extended Support Program, members were to receive access to technical support 24 hours per day, 7 days per week through a toll free telephone number.

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<sup>3</sup>The price for the Extended Support Program membership is not listed on the website and is likely to have varied over time. One consumer reported paying \$175.00 for such a membership.

59. Consumers who paid for the Program, or who were members on a trial basis, often were unable to reach support personnel when attempts were made, both during and after normal business hours.
60. On at least one occasion, one consumer, a member of the Program on a trial basis as a new purchaser, left at least 15 messages with Defendants in an attempt to get service for the software purchased.
61. As a result of Defendants' failure to provide the technical support promised to those who paid to join the Extended Support Program, or who were members on a trial basis, consumers suffered inconvenience in the form of time spent trying to contact Defendants.
62. As a result of Defendants' failure to provide the promised technical support, consumers suffered financial harm through the deprivation of their use of the software while they awaited the promised technical support.
63. As a result of Defendants' failure to provide the promised technical support, consumers suffered financial harm in the amount they paid to join the Extended Support Program, in that they were not able to access the technical support they had purchased in joining the Extended Support Program.
64. Defendants' failure to provide the technical support promised to those who paid to join the Extended Support Program constitutes deception, fraud, false pretense, false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***V. Defendants refused to give the necessary software reactivation codes to those consumers who had not joined the Extended Support Program***

65. Defendants' software requires codes that must be entered approximately annually in order to allow the software to continue functioning.
66. Defendants frequently update/upgrade their software, and those updates/upgrades are provided only to members of the Extended Support Program.
67. When consumers who were not members of the Extended Support Program contacted Defendants for the next year's code, Defendants told consumers that their software was no longer current and that Defendants did not have codes to reactivate the software.
68. Defendants often then told consumers that they would need to pay certain sums of money in order to acquire the more recent software version.
69. Defendants often also told consumers that they would need to join the Extended Support Program so that they could get the necessary updates/upgrades to make their software current.
70. Defendants told consumers that they would only get the necessary reactivation code if they paid the update/upgrade fee or the fee to join the Extended Support Program.
71. Defendants did not notify consumers that their software would not function after a period of time if they did not join the Extended Support Program.
72. By refusing to provide the necessary reactivation codes, Defendants wrongfully deprived consumers of the use of the software they purchased.

73. As a result of being deprived of the use of the software, consumers suffered financial loss and inconvenience.
74. By failing or refusing to make known to consumers prior to the purchase of the software that the software would be unusable when subsequent versions were developed, Defendants have engaged in deception, fraud, false pretense, false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.
75. By requiring consumers to pay upgrade fees or fees for enrollment in the Extended Support Program simply so that the software would be usable again, Defendants have engaged in duress and undue influence, unconscionable practices, deception, fraud, false pretense, false promise, misrepresentation, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***VI. Defendants misled consumers regarding a trial period for the software***

76. On at least one occasion, Defendants told a consumer that the software could be used temporarily on a trial basis, and the consumer, relying on that trial period, purchased the software.
77. When the consumer decided not to keep the software, she was told by Defendants or Defendants' agents that there was no trial period and that she could not have a refund.
78. As a result of Defendants' conduct the consumer suffered financial loss.



79. Defendants' statements and subsequent conduct regarding a trial period for the software constitute misrepresentation, false promise, fraud, and unfair practice as defined by 15 C.S.R. 60-8.020 - 9.100, all in violation of § 407.020.1.

***VII. Defendants failed to reasonably communicate with consumers***

80. On numerous occasions, consumers' attempts to contact Defendants by both telephone and e mail were unsuccessful.
81. On numerous occasions, consumers reached an automated message system when attempting to contact Defendants by telephone.
82. On numerous occasions, messages left on the automated system did not yield a return call.
83. On numerous occasions, consumers' e mails to Defendants went unanswered.
84. On numerous occasions, consumers left multiple messages and sent multiple e mails to Defendants, all with no response.
85. As a result of Defendants failure to respond to reasonable efforts from its customers to communicate, consumers suffered financial loss and inconvenience.
86. Defendants' conduct in response to consumers' communication attempts constitutes unfair practice as defined by 15 C.S.R. 60-8.020, in violation of § 407.020.1.

**RELIEF**

WHEREFORE, Plaintiff prays this Court order the following relief:

87. An Order of this Court finding that the Defendants have violated the provisions of § 407.020.

88. A Preliminary and Permanent Injunction issued pursuant to § 407.100, prohibiting and enjoining Defendants and Defendants' agents, servants, employees, representatives, and other individuals acting at Defendants' discretion or on Defendants' behalf who have notice of the Injunction from violating § 407.020, through the use of any of the unlawful, unfair, and deceptive acts and practices alleged herein.
89. An Order of this Court awarding the State a civil penalty from Defendants of one thousand dollars per violation of § 407.020, the Court finds to have occurred.
90. An Order of this Court requiring Defendants to pay restitution as necessary to restore all persons who suffered ascertainable loss, including but not limited to all moneys or property that may have been acquired by means of any method, act, use, practice, or solicitation, or any combination declared unlawful by the Merchandising Practices Act, pursuant to § 407.100.4.
91. An Order of this Court requiring Defendants to pay all court, investigative, and prosecution costs of this case, pursuant to § 407.130.
92. Any further relief the Court deems just and equitable in this action.

Respectfully Submitted,

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